

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1-8 and 10-12 are rejected under 35 U.S.C. 103 over Stephen B. Wicker Error Control Systems and further in view of the U.S. patent to Gordon.

The claims are also objected to and rejected by the Examiner.

In connection with the Examiner's formal objections and rejections, applicants have amended the claims in formal aspects.

After carefully considering the Examiner's grounds for the rejection of the claims over the art, applicants have also amended the independent claims so as to more clearly define the present invention and to distinguish it from the prior art.

Turning now to the references and particularly to the S.B. Wicker reference, it is respectfully submitted that this reference does not teach the new features of the present invention.

The patent to Gordon deals with storage devices, in particular with an arrayed disc drive system and a corresponding method. Gordon mentions within the discussion of Arrayed Disc Drive System Hardware that Fire Codes have been used in these drives since 1955 in different forms (column 7, lines 55-33). In section Error Correction and Control, Gordon explains that if a customer desires two levels of redundancy both the exclusive OR redundancy and Read-Solomon redundancy is provided (column 9, lines 25-28). In section Disc Controller Software, there is a general statement that the HTASK process block is also responsible for implementing variable redundancy schemes (column 16, lines 43-50).

It should be noted that the expression Fire Code is not mentioned in the context of a variable redundancy. Furthermore, the variable redundancy according to the patent to Gordon is realized by providing either one redundancy mechanism or a combination of two redundancy mechanisms, namely exclusive OR redundancy and Read-Solomon redundancy. A further explanation of how the so-called variable redundancy scheme implemented by the HTASK process block operates could not be found.

The reference therefore does not disclose the new features of the present invention, in particular that the variable redundancy scheme produced by the adjustable fire code is used to dynamically adapt the data rate of the source data to the available band width of a respective data channel. This is primarily of interest when only fixed values for the data rate are possible for a transmission channel, but the data rate of the source data varies. The transmission reliability can be increased in a particularly simple manner by adding additional redundancy bits (paragraph bridging pages 4 and 5). Thus, the control value responsible to select an appropriate Fire Code (redundancy) would be controlled by the (predetermined) data rate (s) of the transmission channel and/or the data rate (s) of the source data. In other words if the data rate of the source data is lower than the available band width of the data channel, additional redundancy is reduced in order to increase error tolerance and to make best use of the available band width.

In the cited prior art, it is neither mentioned nor suggested to dynamically control the redundancy as a function of the data rate of the transmission channel and/or of the data rate of the source data. Therefore, it is believed to be clear that this feature of the present invention is not disclosed in the prior art.

The prior art does not contain any hint or suggestion that such features must be or can be provided in the references. In order to arrive at the applicant's invention from the references, the references have to be fundamentally modified. It is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision *in re Randol and Redford* (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the references do not contain any hint or suggestion for such modification.

It is therefore respectfully submitted that the independent claims currently on file should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, they depend on the corresponding independent claims and they share their presumably allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

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